

**AN ORDINANCE BY
COMMUNITY DEVELOPMENT AND HUMAN RESOURCES COMMITTEE**

AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS, TO ENTER INTO A MANAGEMENT, OPERATING, AND PROGRAMMING AGREEMENT WITH THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE, IN ORDER TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO MANAGE AND OPERATE THE CITY'S OUTDOOR ACTIVITY CENTER AT NO COST TO THE CITY, AND IN ORDER TO ALLOW THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE TO OPERATE EDUCATIONAL PROGRAMMING AT THE OUTDOOR ACTIVITY CENTER; AND TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO HAVE EXCLUSIVE USE OF THE OUTDOOR ACTIVITY CENTER'S OFFICE SPACE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") owns a 21.76 acre nature preserve located at 1442 Richland Road, SW in Atlanta, Georgia called the Outdoor Activity Center. The Outdoor Activity Center includes a natural science museum, meeting rooms and offices (the 21.76 acre parcel, including all improvements thereon, but excluding the residential building located at 1357 Montreat Road in Atlanta, is hereinafter referred to as the "OAC"); and

WHEREAS, the Chattahoochee Nature Center ("CNC") is a privately owned non-profit organization which provides educational experiences regarding the natural world and fosters environmental stewardship through public-private partnerships with local schools; and

WHEREAS, the Department of Parks, Recreation and Cultural Affairs ("DPRCA"), the Atlanta Public Schools, and the CNC wish to enter into a public-private partnership whereby CNC provides natural science field studies to Atlanta Public Schools students utilizing the OAC; and

WHEREAS, the West Atlanta Watershed Alliance ("WAWA") is dedicated to educating the community, including schools, on the importance of greenspace, overall environmental quality, and its connection to the quality of life; and

WHEREAS, WAWA is willing to manage and operate the OAC at no cost to the City in exchange for the City's allowing WAWA to operate its educational activities at the OAC and exclusively utilize the OAC office space; and

WHEREAS, educational programming at the OAC will provide a tremendous benefit to Atlanta Public Schools students as well as to other Atlanta citizens and visitors; and

WHEREAS, WAWA's operation and management of the OAC at no cost to the City will provide a valuable service to the City; and

WHEREAS, the City desires to enter into a Management, Operating and Programming Agreement with CNC and WAWA ("Agreement"), that is substantially similar to Exhibit A attached hereto, in order to allow CNC and WAWA to provide Natural Science Field Studies and Environmental Education at the OAC at no cost to the City, and to authorize WAWA to manage and operate the OAC at no cost to the City, and to authorize WAWA to utilize OAC office space exclusively at no cost.

NOW THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS that the Mayor be and is hereby authorized, on behalf of the City, to enter into the Agreement, that shall set forth the roles and obligations of the City, WAWA and CNC regarding the OAC, that will be substantially similar to Exhibit A attached hereto, and that shall at a minimum provide the following:

- a) CNC shall provide natural science field studies to Atlanta Public Schools students, in part utilizing the OAC. This Program will provide hands-on interactive learning experiences and curricular programs designed to comply with Georgia's teaching standards.
- b) WAWA shall run educational programming at the OAC regarding greenspace and the environment.
- c) WAWA and the City will be responsible for the creation and implementation of after-school programs at the OAC. CNC will serve in an advisory role in the creation of after-school programming at the OAC.
- d) CNC shall share its outdoor naturalist training and environmental education techniques with WAWA and City staff, thereby helping WAWA and the City build a full component of programming at the OAC for the community.
- e) WAWA shall manage and operate the OAC and shall bear the costs associated therewith, except as otherwise set forth in the Agreement.
- f) Despite the use of the OAC by CNC and WAWA, the OAC shall remain a place of visitation by the public for purposes consistent with a nature preserve, including without limitation touring the museum, observing the exhibits, and walking the trails.
- g) WAWA shall have exclusive use of the OAC office space at no cost.
- h) The term of the Agreement will be for a period of five (5) years with an option of one (1) five (5) year renewal upon mutual agreement of all parties.

BE IT FURTHER ORDAINED that, to the extent that CNC and/or WAWA are donating time and money to the City, the City hereby accepts the donation.

BE IT FURTHER ORDAINED that the City Attorney or her designee is hereby directed to prepare the Agreement for execution by the Mayor, and the Agreement shall be approved as to form by the City Attorney or her designee.

BE IT FURTHER ORDAINED that the Agreement shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to WAWA and CNC.

BE IT FINALLY ORDAINED that all ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of the conflict.

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Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/ Human Resources Committee

Caption: AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS, TO ENTER INTO A MANAGEMENT, OPERATING, AND PROGRAMMING AGREEMENT WITH THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE, IN ORDER TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO MANAGE AND OPERATE THE CITY'S OUTDOOR ACTIVITY CENTER AT NO COST TO THE CITY, AND IN ORDER TO ALLOW THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE TO OPERATE EDUCATIONAL PROGRAMMING AT THE OUTDOOR ACTIVITY CENTER; AND TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO HAVE EXCLUSIVE USE OF THE OUTDOOR ACTIVITY CENTER'S OFFICE SPACE; AND FOR OTHER PURPOSES.

Council Meeting Date: February 18, 2008

Requesting Dept.: Department of Parks, Recreation and Cultural Affairs

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to enter into a Management, Operating, and Programming Agreement with the Chattahoochee Nature Center and the West Atlanta Watershed Alliance, in order to allow the West Atlanta Watershed Alliance to manage and operate the City's Outdoor Activity Center at no cost to the city, and to allow the Chattahoochee Nature Center and the West Atlanta Watershed Alliance to operate educational programming at the Outdoor Activity Center.

2. Please provide background information regarding this legislation.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** N/A

(b) **Source Selection:** N/A

(c) **Bids/Proposals Due:** N/A

- (d) **Invitations Issued:** N/A
- (e) **Number of Bids:** N/A
- (f) **Proposals Received:** N/A
- (g) **Bidders/Proponents:** N/A
- (h) **Term of Contract:** N/A

- (l) **Fund Account Center:** N/A

5. Source of Funds: N/A

6. Fiscal Impact: N/A

7. Method of Cost Recovery: .N/A

This Legislative Request Form Was Prepared By: Debra F. Harris

City of Atlanta
Department of Parks, Recreation and Cultural Affairs

MANAGEMENT, OPERATING, AND PROGRAMMING AGREEMENT
BETWEEN
THE CITY OF ATLANTA AND
THE CHATTAHOOCHEE NATURE CENTER AND
THE WEST ATLANTA WATERSHED ALLIANCE
For
The Outdoor Activity Center

GEORGIA FULTON COUNTY

THIS MANAGEMENT AND OPERATING AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into as of the _____ day of _____, 2007, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (hereinafter referred to as the "City"), and the CHATTAHOOCHEE NATURE CENTER (hereinafter referred to as "CNC") and the WEST ATLANTA WATERSHED ALLIANCE (hereinafter referred to as "WAWA"), two Georgia non-profit corporations (hereinafter the City, CNC and WAWA may be referred to collectively as "the Parties").

W I T N E S S E T H T H A T :

WHEREAS, the City of Atlanta owns a 21.76 acre nature preserve located at 1442 Richland Road, SW in Atlanta, Georgia called the Outdoor Activity Center (the 21.76 acre parcel, including all improvements thereon, including without limitation the natural science museum with meeting room and offices, but excluding the residential building located at 1357 Montreat Road in Atlanta, is hereinafter referred to as the "OAC". A diagram of the OAC, setting forth the location of the museum, meeting room and office space, is attached hereto as Attachment A.); and

WHEREAS, CNC is a privately owned non-profit organization dedicated to providing educational experiences regarding the natural world, helping people to better understand the environment while providing fulfilling experiences and adventures; and

WHEREAS, CNC fosters environmental stewardship through partnerships with local schools. In the fall of 2004, CNC entered a public-private partnership with the Cobb County School District and the Cobb County Parks, Recreation and Cultural Affairs Department, whereby CNC provides natural science field studies to Cobb County students utilizing Cobb County green space; and

WHEREAS, the City of Atlanta Department of Parks, Recreation and Cultural Affairs (hereinafter referred to as "DPRCA"), the Atlanta Public Schools (hereinafter referred to as "APS"), and CNC wish to enter a similar public-private partnership, whereby CNC will provide natural science field studies to APS students, in part utilizing

the OAC (hereinafter referred to as the “Program”). The Program will provide hands-on interactive learning experiences and curricular programs designed to comply with Georgia’s teaching standards; and

WHEREAS, WAWA is dedicated to educating the community, including schools, on the importance of greenspace, overall environmental quality and its connection to the quality of life; and

WHEREAS, WAWA has extended its education efforts into local schools, running programs for students between kindergarten through 12th grade; and

WHEREAS, WAWA would like to operate its educational programs at the OAC; and

WHEREAS, WAWA is willing to manage and operate the OAC at no cost to the City in exchange for the City’s allowing WAWA to operate its educational activities at the OAC and exclusively utilize the OAC office space; and

WHEREAS, the execution of this Agreement on the part of the City has been authorized by ordinance (No. 08-O-----) of the Council of the City of Atlanta adopted on -----, 2008, and approved by the Mayor on -----, 2008, in the form and manner of that copy attached hereto as Attachment B and made a part hereof by reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS herein below set forth, the Parties hereto do hereby agree as follows:

1. The Premises

WAWA hereby agrees to manage and operate the OAC pursuant to the terms set forth in this Agreement. For purposes of this Agreement, the OAC shall consist of all of that property located at 1442 Richland Road, SW in Atlanta, Georgia, including:

- a) The 21.76 acre nature preserve; and
- b) The natural science museum located on the preserve (as shown on Attachment A, hereinafter referred to as the “Museum”); and
- c) The meeting room and offices that are located in the Museum (as shown on Attachment A, hereinafter referred to as the “Meeting Room” and the “Office Space” respectively); and
- d) The exhibits located on the Premises, excluding the live animals located therein (hereinafter referred to as the “Exhibits”);
- e) But excluding the residential building located at 1357 Montreat Avenue, SW, Atlanta, Georgia 30310

The OAC may hereinafter also be referred to as the “Premises”.

2. Use of Premises

2.01 Permitted Uses

The OAC shall be used for environmental educational programming to be run by, at the direction of, or with supervision from CNC and/or WAWA and/or the City. CNC shall be responsible for running, directing, and supervising the Program only. The OAC shall also be used as a place of visitation by the public for purposes consistent with a nature preserve, including without limitation touring the Museum, observing the Exhibits, and walking the trails. The OAC may be used for CNC storage of Program materials and for WAWA office space. The OAC may be used for other outdoor events consistent with or supportive of the missions of CNC and/or WAWA, without the CNC's and/or WAWA's meeting the requirements of the City's Outdoor Events Ordinance, but only with prior written consent from the DPRCA Commissioner (hereinafter referred to as "the Commissioner"). The OAC may be used for no other purpose without prior written consent from the Commissioner. Any revenue arising from unauthorized use of the Premises shall inure immediately and completely to the City.

2.02 WAWA Exclusive Use

WAWA shall have exclusive use of the Office Space.

2.03 CNC Exclusive Use

CNC shall have exclusive use of the OAC at all times when CNC is operating the Program at the OAC, provided that those times are pre-approved in writing by the Commissioner. CNC shall provide the Commissioner with a general Program schedule for the upcoming school year no later than July 1st of each year. CNC shall provide the Commissioner with a specific schedule of its requested OAC exclusive use dates for the upcoming school year no later than September 15th of each year. This exclusive use shall not include the Office Space however, for which CNC use shall be prohibited absent written permission by WAWA. WAWA and the City shall be permitted at the OAC for OAC management and operational purposes during CNC's times of exclusive use. WAWA and the City may not perform programs at the OAC during CNC's times of exclusive use unless permitted by CNC in writing. WAWA and the City may participate with CNC during CNC's times of exclusive use, provided CNC pre-approves such participation.

2.04 After School Use

The OAC shall be used during the school year for after-school programming that is run jointly by the City and WAWA.

2.05 Restrictions on Use of Premises

- 2.05.1 Neither CNC nor WAWA shall do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will increase in any way the rate of fire insurance; or create a nuisance; or in any way obstruct or interfere with the rights of others residing or operating businesses near the Premises, or injure or annoy them; or allow any sale by auction on the Premises; or commit or suffer to be committed any waste upon the Premises, except as part of a well-managed, demonstration of composting methods and techniques suitable for a residential environment; or use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; or place any loads upon the floor, walls, or ceiling which will endanger the structure; or do or permit to be done anything in any way tending to injure the reputation of the City or the appearance of the OAC.
- 2.05.2 WAWA shall not vacate or abandon the Premises at any time during the term hereof; and, if it shall abandon, vacate, or surrender the Premises or be dispossessed by operation of law or otherwise, any personal property belonging to WAWA and left upon the Premises or any portion thereof shall, at the option of the City, be deemed to be abandoned and shall, at the option of the City, become the property of the City.
- 2.05.3 CNC has permission to store its Program materials at the OAC, and said materials will remain the sole property of the CNC. At that the end of its involvement with the OAC, CNC shall remove all Program materials from the OAC. The City and/or WAWA do not have permission to use the materials developed by the CNC for their own use and cannot copy or modify the CNC materials for their own use without express written permission of the CNC.

3. Term

The Term of this Agreement shall commence on the date that it is executed and shall continue for five years. Upon mutual agreement of the Parties, the Parties may renew this Agreement for one additional five-year term.

3.01 Inspection of the Premises Prior to Commencement and Expiration of the Term

The Commissioner or her designee, a representative of WAWA, and a representative of CNC shall conduct a walk-through inspection of the OAC within five (5) working days of the commencement of this Agreement. All three parties must sign a walk-through inspection report at the conclusion of the inspection. A walk through inspection of the

Premises shall also be made by the Commissioner or her designee and a representative of WAWA prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Premises. WAWA shall correct or repair any and all deficiencies noted during such inspection where such deficiencies result from WAWA's failure to fulfill one or more of its responsibilities pursuant to this Agreement. A walk through inspection of the Premises shall also be made by the Commissioner or her designee and a representative of CNC prior to the expiration of the Term hereof. CNC shall correct or repair any and all deficiencies noted during such inspection where such deficiencies result from CNC's failure to fulfill one or more of its responsibilities pursuant to this Agreement.

3.02 Special Right of Termination

Any of the Parties shall have the right to terminate this Agreement without cause at any time during the Term or any extension thereof by giving written notice to the other two Parties at least 60 days prior to the date such termination is to be effective. Should the City terminate the Agreement pursuant to this section 3.02, the City agrees to reimburse CNC and WAWA for the reasonable and proper unamortized capital costs of the improvements made by each, as documented by each pursuant to Section 7 below, with amortization being calculated on a straight-line depreciation schedule over the Term of this Agreement, with zero salvage value.

3.03 Surrender of Premises

WAWA shall yield and deliver peaceably to the City possession of the Premises and, to the extent required hereunder, the improvements made thereon, at the end of the Term, whether such end occurs by termination, expiration, or otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Term, except for reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Agreement. Except as may be otherwise required by this Agreement, WAWA shall remove its personal property, signs and trade fixtures from the Premises and shall surrender the Premises and appurtenances thereto in clean and neat condition. All keys to the Premises, other than those in the possession of CNC, shall be delivered to the Commissioner by WAWA. The Commissioner shall determine that the Premises are clean, neat, and in good repair as provided in this Section. WAWA can take trade fixtures, furniture and personal property, provided that the same are removed within thirty days after the end of the Term. Any trade fixtures, furniture, and other personal property belonging to WAWA and left upon the Premises or any portion thereof for greater than

thirty (30) days after the end of the Term of this Agreement shall, at the option of the City, be deemed to be abandoned and shall, at the option of the City, become the property of the City.

CNC shall yield and deliver peaceably to the City possession of the Premises and, to the extent required hereunder, the improvements made thereon, at the end of the Term, whether such end occurs by termination, expiration, or otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Term, except for reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Agreement. Except as may be otherwise required by this Agreement, CNC shall remove its personal property, signs and trade fixtures from the Premises and shall surrender the Premises and appurtenances thereto in clean and neat condition. All keys to the Premises in the possession of CNC shall be delivered to the Commissioner by CNC. The Commissioner shall determine that the Premises are clean, neat, and in good repair as provided in this Section. CNC can take trade fixtures, furniture and personal property, provided that the same are removed within thirty days after the end of the Term. Any trade fixtures, furniture, and other personal property belonging to CNC and left upon the Premises or any portion thereof for greater than thirty (30) days after the end of the Term of this Agreement shall, at the option of the City, be deemed to be abandoned and shall, at the option of the City, become the property of the City.

4. Rental and Other Responsibilities of Parties

CNC and WAWA shall not owe monthly rent to the City regarding the Premises. In addition to waiving rent, the City shall perform the responsibilities set forth in section 4.03 below. In exchange for a waiver of monthly rent and the City's performance of its other obligations listed below, CNC and WAWA shall perform the responsibilities set forth in sections 4.01 and 4.02 below.

4.01 CNC Responsibilities:

4.01.1 CNC shall prepare, organize, and implement the Program.

4.01.1.1 The Program shall be a three to five-part environmental science program that integrates the outdoor environment at the OAC as part of the curriculum.

4.01.1.2 The Program will initially be for 3rd, 4th, 5th and 7th grade students enrolled at Finch and Beecher Elementary Schools & Brown Middle School, but CNC may expand the Program to other grades and schools as resources permit, with the approval of the Commissioner.

4.01.1.3 The Program shall build student understanding over the year through classroom visits and field experiences for students in every participating classroom.

- 4.01.1.4 The Program shall be performed in a professional, first-class and expert manner and in accordance with the reasonable and customary standards of the industry.
- 4.01.1.5 CNC naturalists shall teach the field studies portion of the Program, with periodic assistance from WAWA and the City as described in sections 4.02 and 4.03 below. CNC will provide necessary training opportunities to its naturalists.
- 4.01.1.6 CNC shall provide the Commissioner or her/his designee with an annual programming plan no later than July 1 of each year of the Term of this Agreement. The plan shall set forth the programming that CNC intends to perform at OAC in the upcoming academic year, beginning September 1 and ending August 31, and shall designate which of the programming is part of the Program, and when CNC will need exclusive use of the OAC as described in section 2.03 above. CNC shall not begin the programming until it is approved in writing by the Commissioner or her/his designee.
- 4.01.1.7 CNC shall prepare and provide to the Program participants all Program materials, including without limitation student journals and written Teacher Guides.
- 4.01.1.8 CNC shall coordinate Program scheduling with all schools and classes participating in the Program.
- 4.01.1.9 CNC shall prepare an appropriate curriculum for the Program, to be utilized by students and teachers.
- 4.01.1.10 All costs associated with the Program shall be borne by CNC, except where stated otherwise in this Agreement.
- 4.01.1.11 CNC shall create a manner of assessing the Program that shall include, without limitation, a teacher feedback committee for APS teachers whose students participate in the Program. CNC shall perform a Program assessment annually, at the completion of the school year, and shall implement Program modifications annually based upon the assessment results.
- 4.01.2 Though CNC shall not be responsible for performing after-school programming or any other programming at the OAC other than the Program, CNC shall share its outdoor naturalist training and environmental education techniques with WAWA and City staff, thereby helping WAWA and the City build a full component of programming for the community at the OAC.
- 4.01.3 CNC shall prepare an annual budget for the Program and for all other activities that it shall perform at the OAC, and shall present this annual budget to the Commissioner for review within thirty days of the budget's completion.
- 4.01.4 CNC shall participate annually in a City evaluation of the OAC.

- 4.01.5 CNC shall maintain records of all accounts, receipts, expenditures, cash reserves, Program activities and attendance figures which shall accurately reflect the detailed financial and programmatic operations of the Program and of all CNC activities at the OAC. These records shall be made available to the City upon the City's request. CNC shall provide an annual summary of these records to the Commissioner by no later than July 1 of each year throughout the Term of this Agreement, and the summary shall include without limitation programmatic information by participating schools and grade.
- 4.01.6 CNC shall notify the Commissioner or her/his designee within three hours of learning of any Program-related issue that involves the media or the police or fire departments or emergency medical services.
- 4.01.7 CNC shall work cooperatively with WAWA and the City.
- 4.02 WAWA Responsibilities:
 - 4.02.1 WAWA shall manage and operate the OAC pursuant to the terms set forth in this Agreement, including without limitation sections 6 and 7 below regarding maintenance and improvements.
 - 4.02.2 WAWA shall bear all costs associated with managing and operating the OAC, except as otherwise stated in this Agreement.
 - 4.02.3 WAWA shall make certain that the OAC is open and ready for use at least twenty minutes prior to any and all times that CNC has exclusive use of the Premises, as described in section 2.03 above. The Commissioner will provide WAWA with the exclusive use schedule for the upcoming school year by no later than August 1 of that year.
 - 4.02.4 WAWA shall keep the OAC open during the following times, at a minimum: Monday through Friday- 10:00 a.m. through 5:00 p.m.; Saturday- 9:00 a.m. through 3:00 p.m.; and Sunday- noon through 5:00 p.m. Any exception to these minimum hours must be pre-approved by the Commissioner in writing. When the OAC is open, it shall be available for use by the public, free of charge, except during those times when CNC has exclusive use of the Premises.
 - 4.02.5 WAWA shall keep the OAC fence locked and secured at all times when the OAC is closed, is being exclusively used by CNC, or is otherwise not open to the public. WAWA shall keep the Museum locked and secured at all times when the OAC is closed, and during times when there is no staff person present in the Museum, even if the OAC is open.
 - 4.02.5.1 WAWA shall not change or re-key any locks to the OAC and/or the Museum.
 - 4.02.5.2 In the event that locks are lost, stolen or vandalized, WAWA shall notify the Commissioner or her/his designee

via phone or email, who shall promptly provide replacements or arrange emergency repairs, as appropriate. WAWA shall be responsible for the replacement cost of such locks and/or the costs of the needed repairs where the circumstances leading to the need for the repair and/or replacement arise as described in section 6.04 and/or 6.05 of this Agreement.

- 4.02.6 WAWA shall maintain security at the OAC as deemed necessary by the City, in consultation with WAWA and CNC.
- 4.02.7 WAWA shall run educational programming at the OAC regarding greenspace and the environment, the details and timing of which shall be presented to the Commissioner or her/his designee at least thirty days prior to the proposed programming. WAWA shall not run the proposed programming until approved in writing by the Commissioner or her/his designee.
- 4.02.8 CNC will serve in an advisory role in the creation of after-school programming at the OAC. WAWA and the City will be responsible for the creation and implementation of after-school programs at the OAC.
- 4.02.9 WAWA shall assist CNC with running the Program at the OAC upon request, contingent upon WAWA's availability.
- 4.02.10 WAWA shall provide training for middle school APS teachers in Urban Watershed
- 4.02.11 WAWA shall maintain records of all accounts, receipts, expenditures, cash reserves, activities and other programming, and attendance figures which shall accurately reflect the detailed financial and programmatic operations of the OAC. These records shall be made available to the City upon the City's request. WAWA shall provide an annual summary of the financial and programmatic records to the Commissioner by no later than July 1 of each year throughout the Term of this Agreement. WAWA shall also provide a monthly summary of the programmatic and attendance records to the Commissioner by no later than the 5th of each month throughout the Term of this Agreement.
- 4.02.12 WAWA shall notify the Commissioner or her/his designee within twenty-four hours upon discovering a safety, sanitary, and/or maintenance issue that needs to be addressed at the OAC regardless of whether WAWA intends to resolve the issue.
- 4.02.13 WAWA shall notify the Commissioner or her/his designee within three hours of learning of any OAC-related issue that involves the media or the police or fire departments or emergency medical services.
- 4.02.14 WAWA shall participate annually in a City evaluation of the OAC.
- 4.02.15 WAWA shall work cooperatively with WAWA and the City.

4.03 City Responsibilities:

- 4.03.1 The City shall assist WAWA in the maintenance and upkeep of the OAC as described in detail throughout this Agreement.
- 4.03.2 WAWA shall work jointly with the City to create and implement after-school programming at the OAC.
- 4.03.3 The City shall make available its Recreation Specialist for Outdoor Education or other staff to assist with the implementation of the Program at the OAC. The City's assistance shall be at agreed-upon times established annually by the City, in consultation with CNC, after the City receives CNC's annual programming plan described in section 4.01.1.6 above.
- 4.03.4 The City shall print the journals and teachers' guides for the Program, at no cost to CNC or WAWA.
- 4.03.5 The City shall participate in a teacher feedback committee created and run by CNC and APS.
- 4.03.6 The City shall evaluate annually with WAWA and CNC the overall use of the OAC and whether each of the Parties is reaching its goals regarding its desired accomplishments at the OAC.
- 4.03.7 The City shall provide written support for the Program for CNC's efforts to obtain additional funding and grant money. The City shall assist with grant writing and other fundraising opportunities regarding the Program when able.
- 4.03.8 The City shall work cooperatively with WAWA and CNC.

5. Utilities

The City shall maintain, repair and replace all utilities serving the Premises and pay all charges for utility services to the Premises promptly when due. CNC and WAWA hereby expressly waive and release the City from any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, provided that such failures or interruptions were not occasioned by the City's fault or neglect.

6. Maintenance and Repair of Premises

6.01 Maintenance of Grounds

The City, at its sole cost and expense, will provide basic maintenance of the Premises' grounds, including, but not limited to mowing, litter control, and maintenance of the tree canopy. The City shall provide WAWA with a schedule at the beginning of the Term of this Agreement, and then again at the beginning of each calendar year of the Term of this Agreement, that shall set forth the City's annual maintenance schedule for the Premises. In addition to the City's performance of routine maintenance, WAWA shall be responsible for providing additional grounds maintenance so that the OAC remains in a safe and attractive condition. WAWA shall submit an annual maintenance plan to the Commissioner upon the execution of this

Agreement, and no later than January 1 of each year during the Term, setting forth the OAC maintenance activities that WAWA proposes to perform in the upcoming year. WAWA shall not begin said maintenance until the maintenance plan is approved in writing by the Commissioner.

6.02 Maintenance and Repair of Office Space and Exhibits; Care of Animals

WAWA, at its sole cost and expense, shall maintain and repair the Office Space and all Exhibits, except that where the cost of a specific act of maintenance and/or repair exceeds \$1,000, and where the Commissioner determines in writing that the need for said maintenance and/or repair does not arise pursuant to section 6.04 and/or 6.05 below, the City shall cause said maintenance and/or repair to be performed at no cost to the WAWA. WAWA shall keep the Office Space, including all equipment and fixtures existing therein, and the Exhibits, in good, safe, sanitary, and presentable condition, consistent with the highest forms of business practices. In addition, the Exhibits shall be maintained in a humane condition, consistent with the health needs of the animals located therein. WAWA, at its sole cost and expense, shall obtain all necessary permits required by state and federal agencies for legal possession of animals and/ or biofacts. Should WAWA suspect that an animal located in an Exhibit requires veterinary care, WAWA shall notify the Commissioner or her/his designee of such via telephone and email within twenty-four hours. The City shall be responsible for determining whether the veterinary care is necessary, and if so, for causing the veterinary care to be provided and for paying all costs associated therewith.

6.03 Maintenance and Repair of Remainder of Improvements and Infrastructure

In addition to the obligations set forth in section 6.02 above, WAWA, at its sole cost and expense, shall be responsible for the routine maintenance of the Museum, including without limitation the Meeting Room, and all other improvements and infrastructure located on the Premises. WAWA shall keep the Museum, and other improvements and infrastructure, including without limitation all equipment and fixtures existing therein, in good, safe, sanitary, and presentable condition, consistent with the highest forms of business practices. Except as set forth in 6.02 above, and except for routine maintenance, the City, at its sole cost and expense, shall maintain and repair the Museum, including the Meeting Room, and all other improvements and infrastructure located on the Premises, except where said repairs arise as set forth in section 6.04 and/or 6.05 below. The City, after consultation with WAWA, shall reasonably determine what maintenance is routine.

6.04 Repair Arising from Special Event

WAWA shall be responsible for timely completing or causing to be completed, at not cost to the City, all repairs of the Premises whose need arises from an Outdoor Festival, Assembly, Large Gathering, or other Outdoor Event or special event sponsored and/or approved by WAWA.

CNC shall be responsible for timely completing or causing to be completed, at not cost to the City, all repairs of the Premises whose need arises from an Outdoor Festival, Assembly, Large Gathering, or other Outdoor Event or special event sponsored and/or approved by CNC.

Where the Outdoor Event is sponsored by both CNC and WAWA, both shall have the foregoing responsibilities, and shall be jointly and severally liable for completion of the same.

6.05 Repair Arising from CNC's or WAWA's Conduct

CNC shall be responsible for timely completing or causing to be completed, at not cost to the City, all repairs of the Premises whose need arises from intentional or negligent acts, errors, or omissions by: CNC; CNC's officers, agents, employee(s), volunteer(s), and/or invitee(s); CNC's consultants/contractors or their officers, agents or employees; or CNC's consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees.

WAWA shall be responsible for timely completing or causing to be completed, at not cost to the City, all repairs of the Premises whose need arises from intentional or negligent acts, errors, or omissions by: WAWA; WAWA's officers, agents, employee(s), volunteer(s), and/or invitee(s); WAWA's consultants/contractors or their officers, agents or employees; or WAWA's consultants'/contractors' subconsultants/subcontractors, or their officers, agent or employees.

6.06 WAWA's and CNC's Obligation

If after thirty (30) days written notice from the City, WAWA fails to maintain or repair the Premises, or any portion thereof, pursuant to obligations arising under sections 6.01 through 6.05 above, then the City may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and WAWA shall pay the cost thereof for which it is responsible pursuant to the above sections, to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then WAWA shall not be in default and the City may not exercise its option herein if WAWA has commenced repairs within said thirty-day period and diligently pursued same to completion. Any unpaid

amounts under this Section 6 shall bear interest at the rate of 10% per annum until paid in full.

If after thirty (30) days written notice from the City, CNC fails to maintain or repair the Premises, or any portion thereof, pursuant to obligations arising under sections 6.01 through 6.05 above, then the City may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and CNC shall pay the cost thereof for which it is responsible pursuant to the above sections, to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then CNC shall not be in default and the City may not exercise its option herein if CNC has commenced repairs within said thirty-day period and diligently pursued same to completion. Any unpaid amounts under this Section 6 shall bear interest at the rate of 10% per annum until paid in full.

7. Improvements

WAWA hereby accept the Premises in their “as-is” condition and shall construct or install all improvements or equipment in the Premises required for the uses and purposes contemplated herein without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications. CNC also accepts the Premises in their “as-is” condition and shall construct or install all improvements or equipment in the Premises required for the uses and purposes contemplated herein without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications therefore.

7.01 Contractors Hired

WAWA shall hire contractors who are acceptable to the City. All contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as the City may reasonably require, and with endorsements described in Section 13 herein below. WAWA shall obtain and pay all fees for all permits required by the City or other legal jurisdictions, as applicable, for all improvements to the Premises by WAWA, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

CNC shall hire contractors who are acceptable to the City. All contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as the City may reasonably require, and with endorsements described in Section 13 herein below. CNC shall obtain and pay all fees for all permits required by the City or other legal jurisdictions, as applicable, for all improvements to the Premises by CNC, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

7.02 Documentation of Improvements

WAWA shall furnish a set of As-Built Drawings to the Commissioner for all Improvement made by WAWA. Further, WAWA shall document the costs of its Improvements in a form and detail satisfactory to the Commissioner and shall submit same within 30 calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Improvements to be reimbursed to WAWA pursuant to Sections 3.02 and 16.2 herein.

CNC shall furnish a set of As-Built Drawings to the Commissioner for all Improvement made by CNC. Further, CNC shall document the costs of its Improvements in a form and detail satisfactory to the Commissioner and shall submit same within 30 calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Improvements to be reimbursed to CNC pursuant to Sections 3.02 and 16.2 herein.

7.03 Removal and Demolition

WAWA shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of WAWA to replace the same by an improvement specified in such consent, but the Commissioner shall not withhold consent unreasonably and shall not impose unreasonable conditions on the consent.

CNC shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of CNC to replace the same by an improvement specified in such consent, but the Commissioner shall not withhold consent unreasonably and shall not impose unreasonable conditions on the consent.

7.04 Title

Title to any and all improvements made by CNC and/or WAWA to or upon the Premises shall pass to and be vested in the City upon completion of each improvement.

8. Trash and Refuse

8.01 Basic Garbage Collection, Additional Removal and Disposal

The City shall provide basic garbage collection services for the Premises at no cost to WAWA or CNC, except that WAWA shall be responsible for its own

sanitation services costs for any Outdoor Festivals, Assemblies, Large Gatherings, or other Outdoor Events or special events sponsored and/or approved by WAWA, and CNC shall be responsible for its own sanitation services costs for any Outdoor Festivals, Assemblies, Large Gatherings, or other Outdoor Events or special events sponsored and/or approved by CNC, where the City Code of Ordinances would require the sponsor to assume the sanitation costs if the Code applied to said event. The Parties acknowledge that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Premises is essential. Where the City's basic services are insufficient to accomplish this outcome, WAWA shall arrange for such removal and disposal of same at its cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

8.02 Storage Containers

Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened, pending their removal and disposal, and WAWA shall make certain that such storage does not generate odors, attract rodents or insects, or become offensive in any manner.

8.03 Deleterious Wastes

WAWA and CNC shall obey any and all applicable laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems and the required treatment of those products. In the event that WAWA violates this provision, and/or the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of WAWA to comply with this Subsection, then in such event, WAWA shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefore from the City, and in addition, the provisions set forth in the first paragraph of section 10.03 (Hazardous Substances Section) below, regarding WAWA's obligations to the City, shall apply. In the event that CNC violates this provision, and/or the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of CNC to comply with this Subsection, then in such event, CNC shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefore from the City, and in addition, the provisions set forth in the first paragraph of section 10.03 (Hazardous Substances Section) below, regarding CNC's obligations to the City, shall apply. For purposes of this subsection 8.03, deleterious waste shall not include materials which are deemed hazardous materials, as set forth in section 10.03 below.

9. Encumbrances and Liens

WAWA shall not encumber its interest in the Premises or in any improvements that it places thereon by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of said encumbrances which have been consented to by the City, WAWA shall keep the Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by them, including without limitation WAWA's employees, agents, sublessees, contractors and/or subcontractors. WAWA shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) for which it is responsible or partially responsible, and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that WAWA may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

CNC shall not encumber its interest in the Premises or in any improvements that it places thereon by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of said encumbrances which have been consented to by the City, CNC shall keep the Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by them, including without limitation CNC's employees, agents, sublessees, contractors and/or subcontractors. CNC shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) for which it is responsible or partially responsible, and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that CNC may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

10. Compliance with Laws and Regulations

10.01 General Compliance

WAWA and CNC shall not omit or fail to do anything, or do or permit anything to be done on or about the Premises, or bring or keep anything on the Premises on in any improvement erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by WAWA and CNC which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Premises.

10.02 Drug-Free Workplace Policy

WAWA and CNC acknowledge that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property and thus on the Premises. Violation of this provision of this Agreement shall result in immediate termination of the Agreement by the City.

10.03 Hazardous Materials

Except in compliance with all applicable requirements, neither CNC nor WAWA shall allow the entrance of Hazardous Materials, as defined below, from the Premises into the sewage and stormwater drainage system serving the Premises. Neither CNC nor WAWA shall cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Premises. CNC and WAWA hereby indemnify the City from and against any breach by CNC and/or WAWA respectively of the obligations stated in the preceding sentences, and agree to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against CNC and/or WAWA, the City or others for whom the City may be responsible, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of the City by WAWA and CNC also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by CNC and/or WAWA results in any contamination of the Premises, CNC and/or WAWA respectively shall promptly take all actions at their sole expense as are necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Material to the Premises; provided that the City's approval of such actions, and the contractors to be used by CNC and/or WAWA in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority having jurisdiction over the Premises, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a

“hazardous substance” pursuant to Section 311 of the Federal water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903), or (d) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601).

11. Non-Discrimination

11.01 Certification of Non-Discrimination Covenant

By execution of this Agreement, CNC and WAWA certify that, during the Term of this Agreement, each shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment and/or services covered by this Agreement or contract shall not discriminate against any participant, volunteer, employee, or applicant for participation, volunteerism or employment, because of the race, creed, color, religion, sex, national origin, marital status, parental status, age, physical handicap, sexual orientation, or gender identity of such person."

As used here, the words ‘shall not discriminate’ shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for participation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

11.02 Mandatory Contractor, Subcontractor and Sublessee Compliance

CNC and WAWA shall incorporate a copy of the Nondiscrimination Covenant, section 11.01 above, in each and every contract related to this Agreement with each and every Contractor, Subcontractor and/or Sub-lessee of any tier, and shall require each and every Contractor, Subcontractor and/or Sub-lessee of any tier, to comply with all such requirements.

12. Transfer of Title or Rights

12.01 Limitations on Assignment, Transfer

Neither WAWA nor CNC shall sell, assign, or transfer this Agreement without the prior written consent of the City. Section 19.2 of this Agreement,

regarding unreasonable withholding of consent, shall not apply to this section 12.01. The City shall have the right to charge a rental rate up to fair market value at the time of any sale, assignment or transfer. No assignee for the benefit of CNC 's and/or WAWA's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this paragraph.

12.02 Subletting

WAWA shall not sublease the Premises, or any portion thereof or any privilege granted with respect to the operation of said Premises or any portion thereof, without the prior written consent of the Commissioner. Section 19.2 of this Agreement, regarding unreasonable withholding of consent, shall not apply to this section 12.02. WAWA shall retain any income from subletting and shall utilize said income solely for the maintenance and operation of the Premises.

13. Liability, Indemnity, and Insurance

13.1 City's Liabilities

The City shall not in any way be liable or responsible for any loss or damage or expense that CNC and/or WAWA may sustain or incur in its occupancy and use of the Premises hereunder.

13.2 Indemnification and Hold Harmless

(a) Releases and Indemnification:

CNC and WAWA hereby release and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of CNC and/or WAWA respectively, its/their volunteers, officers, employees, agents, subcontractors or of anyone acting under its/their direction or control or on its/their behalf in connection with or incidental to this Agreement.

(b) Negligence and Waiver

CNC's and WAWA's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. CNC and WAWA further agree that this obligation to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Section 13.2 shall survive any termination or expiration of this Agreement.

13.3 Insurance and Bonding Requirements

13.3.1 General Preamble

The following general requirements apply to WAWA and CNC, but where appropriate may be satisfied by WAWA's and/or CNC's contractors and sub-contractors who perform work directly or indirectly for WAWA and/or CNC in the Premises. Compliance is required by all sub-lessees of any tier. Insurance and bonding requirements are based on information received as of the date of this Agreement. The City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Agreement.

13.3.2 Evidence of Insurance Required Before Work Begins

Neither WAWA nor CNC nor any sub-lessee shall allow its contractors or sub-contractors to commence any work of any kind pursuant to this Agreement until all Insurance and Bond requirements contained in this Agreement shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The insurance certificate or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.

13.3.3 Minimum Financial Security Requirements for Insurers

Any and all companies providing insurance required pursuant to this Agreement must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the insurance certificate form. For all contracts, regardless of size, companies providing Insurance or Bonds under this Agreement must have a current:

- i. Best's Rating not less than A-; and current;
- ii. Best's Financial Size Category not less than Class IX;
- iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts; and,

furthermore, all bid, performance and payment bonds must be issued by a U. S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to WAWA and/or CNC as appropriate, who shall promptly itself/themselves, or require their contractor to, obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of WAWA and/or CNC to furnish, deliver, and maintain such insurance or bonds as herein provided, this Agreement, at the election of the City, may be declared forthwith suspended, discontinued, or terminated. Failure of WAWA and/or CNC to take out and/or to maintain any required insurance or bonds shall not relieve them from any liability under this Agreement, nor shall these requirements be construed to conflict with the obligation of this Agreement concerning indemnification.

13.3.4 Insurance Required for Duration of Agreement

Any and all insurance and bonds required pursuant to this Agreement shall be maintained during the entire Term of this Agreement, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Agreement and to negotiate such adjustments as reasonably appear necessary.

13.3.5 Mandatory 30-day Notice of Cancellation or Material Change

The City shall, without exception, be given no fewer than 30 days notice prior to cancellation for other than non-payment of premiums or for material change of any insurance or bond required by this Agreement. Non-payment of premiums shall require 10 days prior notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the insurance certificate and on any and all Bonds and Insurance policies required by this Agreement.

13.3.6 City as Additional Insured

City shall be covered as Additional Insured under any and all Insurance and Bonds required pursuant to this Agreement, and such insurance shall

be primary with respect to the Additional Insured. Confirmation of this must unconditionally appear on any insurance certificate provided by WAWA and CNC. WAWA and CNC must also submit to the City an Additional Insured Endorsement evidencing City's rights as an Additional Insured for each policy of insurance under which it is required. This requirement is not applicable to Workers' Compensation insurance, or Payment and Performance Bonds.

13.3.7 Mandatory Contractor, Subcontractor, and Sublessee Compliance

WAWA shall incorporate a copy of these Insurance, Bond, and Indemnification and Hold Harmless requirements in each and every contract with each and every Contractor, Subcontractor and/or Sub-lessee of any tier, and shall require each and every Contractor, Subcontractor and/or Sub-lessee of any tier to comply with all such requirements. WAWA agrees that if for any reason any Contractor, Subcontractor, or Sub-lessee fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by WAWA at its expense.

13.3.8 Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Agreement shall warrant when signing the insurance certificate that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the insurance certificate as evidence of such coverage. The agent shall also warrant that where the City's coverage requirements may be broader than the original policies', these requirements have been conveyed to the company for these terms and conditions. In addition, each every agent shall warrant when signing the insurance certificate that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

13.4 Workers' Compensation and Employer's Liability Insurance

WAWA and CNC shall each procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under this Agreement:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease \$100,000 each accident

Bodily Injury by Accident/Disease \$100,000 each employee

Bodily Injury by Accident/Disease \$500,000 policy limit

13.5 General Liability Insurance

WAWA and CNC shall each procure and maintain General Liability Insurance in an amount not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the insurance certificate:

- (1) Comprehensive Form
- (2) Contractual Insurance – (Blanket or specific applicable to this Agreement)
- (3) Personal Injury
- (4) Broad Form Property Damage
- (5) Premises – Operations

13.6 Automobile Liability Insurance

WAWA and CNC shall each procure and maintain Automobile Liability Insurance with not less than \$500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

- (1) Comprehensive Form
- (2) Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event that WAWA does not own any automobiles in its corporate name, non-owned vehicle coverage shall apply and must be endorsed on WAWA's personal automobile policy or the Comprehensive General Liability coverage required under this Agreement.

In the event that CNC does not own any automobiles in its corporate name, non-owned vehicle coverage shall apply and must be endorsed on CNC's personal automobile policy or the Comprehensive General Liability coverage required under this Agreement.

13.7 Property Insurance

WAWA shall procure and maintain Property Insurance covering all forms of risk on the Premises, on all of WAWA's improvements to the Premises and any other interests of WAWA's, if applicable, in or about the Premises, including inventory, supplies, and other property of WAWA located on the Premises, insuring against the perils of fire, lightning, extended coverage, vandalism, malicious mischief, glass breakage, and sprinkler leakage, in an amount equal to the full replacement value of the Premises, and the full replacement value of

WAWA's improvements and any other interests WAWA in or about the Premises.

14. Property Insurance; Damage or Destruction of the Premises

14.1 Repair and Rebuilding

Each of the Parties hereto shall insure its respective interest in the Premises. In this regard, WAWA shall comply with the provisions of Section 13 above, CNC shall comply with the provisions of Section 13 above, and the City shall have the right to be self-insured. In the event of damage to or destruction of the Premises by fire or other casualty or otherwise, the Parties shall repair or rebuild the Premises to the extent of their respective interests with all reasonable diligence and dispatch so as to restore it, as nearly as possible, to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed upon between Parties, and further subject to the provisions of Section 14.2 below.

14.2 Option of City Not to Repair or Rebuild

If the entire Premises is so substantially damaged or destroyed that the City determines that rebuilding is not prudent, it may elect within 60 days of the date of the damage or destruction not to rebuild and within such period so notify CNC and WAWA. In such event, the insurance proceeds paid on claims filed by the City relative to losses sustained by the City under insurance policies obtained by the City, if any, shall be payable to the City, insurance proceeds paid on claims filed by CNC and/or WAWA relative to losses sustained by CNC and/or WAWA respectively, under insurance policies obtained by CNC and/or WAWA, shall be payable to CNC and/or WAWA respectively, and all other claims shall be paid as the interests of the Parties may appear, and this Agreement shall be terminated.

14.3 Failure of City to Repair or Rebuild

If the damage or destruction is so extensive that the Premises cannot reasonably be used by CNC and/or WAWA to conduct their businesses, and the City fails to proceed within 60 days with repair and rebuilding as required herein and to diligently proceed thereafter to pursue such repair and rebuilding as required herein to completion, CNC and/or WAWA may terminate this Agreement for default.

15. DEFAULT BY CNC AND/OR WAWA

15.1 Events of Default

CNC and/or WAWA shall be in default under this Agreement if:

15.1.1 Failure to Abide by Agreement's Terms

CNC and/or WAWA shall fail to keep, perform, or observe any other term, covenant, or condition of this Agreement to be kept, performed, or observed by them and shall not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or, if such failure cannot be cured within said thirty (30) day period, CNC and/or WAWA fail to commence such cure within that period and thereafter to diligently pursue same to completion. The thirty (30) day cure period shall not apply to violations set forth in section 10.02 above nor in sections 15.1.2 nor 15.1.3 below.

15.1.2 Abandonment of Premises or Cessation of Services

CNC and/or WAWA abandon the Premises, or cease providing their services as described in paragraph 4 above for thirty (30) days or more, except when such abandonment and cessation is due to fire, earthquake, strike, governmental action, default by the City, or any other cause beyond the control of CNC and/or WAWA.

15.1.3 Misrepresentation and Moral Turpitude

CNC and/or WAWA intentionally and willfully misrepresent to the City any material fact regarding its ability to enter into this Agreement or commit an act of moral turpitude or criminal conduct related to this Agreement.

15.2 City's Remedies

If default is made by CNC and/or WAWA, as described in section 15.1 above, the City may terminate this Agreement upon written notice to CNC and WAWA.

15.2.1 Possession

Without any showing of need or the presence of any statutory or common law grounds, all of which requirements are hereby expressly waived by CNC and WAWA, upon termination of this Agreement by the City due to the CNC's and/or WAWA's default, the City may take possession of the Premises, exclusive of trade fixtures, inventory, and personal property, and relet all or any portion thereof.

15.2.2 Other Remedies

The City may exercise any and all other rights or remedies available at law or in equity, including, without limitation, the right to obtain restraining orders, injunctions, and decrees of specific performance.

16. Default by the City

16.1 Events of Default

The City shall be in default under this Agreement if:

16.1.1 Premises not Available to CNC and/or WAWA

The City shall deprive CNC and/or WAWA of their right to occupy and use the Premises in accordance with the terms of this Agreement for a period in excess of five (5) calendar days, except when such deprivation is due to fire, earthquake, strike, governmental action, default by the CNC and/or WAWA, or any other cause beyond the control of the City.

16.1.2 Failure to Abide by Agreement's Terms

The City shall fail, after receipt of thirty (30) days prior written notice from CNC and/or WAWA, to keep, perform, or observe any other term, covenant, or condition of this Agreement to be kept, performed, or observed by the City.

16.2 CNC's and/or WAWA's Remedies

If default is made by the City as described in section 16.1 above, CNC and/or WAWA may terminate this Agreement upon written notice to the other Parties. CNC and/or WAWA may charge the City for the reasonable and proper unamortized capital costs of the Improvements it made, as documented pursuant to Section 7 above, and amortized based upon a straight-line depreciation schedule over the Term of this Agreement, with zero salvage value.

17. City Inspection of Premises

The City shall have the right, upon prior notice to CNC and/or WAWA, and at any reasonable time, to inspect the Premises for the purpose of determining whether or not CNC and/or WAWA are complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. In the event of an emergency, the City shall have the absolute right to take such action therein as may be required for the protection of persons or property. WAWA shall assure the City of emergency access to the Premises by providing emergency telephone numbers at which it or its agents may be reached on a 24-hour basis. For non-emergencies, the City's employee or representative shall be escorted by an authorized employee of WAWA.

18. Waivers

No waiver by a Party at any time of any of the terms, conditions, or covenants of this Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy, or privilege of a Party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to a Party by this Agreement are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided by law except as specifically provided herein, and the exercise of one right, power, option, or remedy, by a Party, shall not impair its right to any other right, power, option, or remedy, except as specifically provided herein.

19. Miscellaneous Provisions

19.1 Usufruct

The rights of WAWA and/or CNC hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

19.2 Consent Not to be Unreasonably Withheld

Whenever consent or approval is required hereunder by either of the Parties, such consent is not to be unreasonably withheld, or to be delayed for any unreasonable period of time.

19.3 Recording

WAWA and/or CNC may record this Agreement, any memorandum or short form of this Agreement, or any affidavit with respect to this Agreement, as a public record document in the appropriate office. The recording of this Agreement does not grant an estate in the Premises.

19.4 Severability

If any clause or provision of this Agreement is declared illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then, in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

19.5 Gender

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

19.6 Attachments

All attachments, riders, memoranda of understanding, and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof by reference for all intents and purposes.

19.7 No Joint Venture

The City and WAWA and CNC are not and shall not be deemed to be, for any purpose, partners or joint-venturers with each other.

19.8 Time of the Essence

Time is expressed to be of the essence with regard to each provision of this Agreement.

19.9 Evidence of CNC and WAWA

WAWA and CNC shall deliver to the City such legal documentation to evidence that those signing this Agreement are authorized by CNC and WAWA to bind CNC and WAWA respectively to the commitments made in this Agreement.

19.10 Applicability of Code Provisions

All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of the City of Atlanta now existing and as may be amended from time to time, to the extent they are not in conflict or inconsistent with applicable Federal Laws or State Laws.

19.11 Successors and Assigns

Each and all of the terms, conditions, and covenants of this Agreement shall extend to and bind and inure to the benefit of the City and WAWA and CNC, and the legal representatives, successors, and assigns of either or both of them.

19.12 Notices

All notices required to be given to WAWA and/or CNC hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid

(with a copy sent via regular mail) to CNC and to WAWA, addressed as follows:

ATTN: _____,
Chattahoochee Nature Center

Atlanta, Georgia

ATTN: _____,
West Atlanta Watershed Alliance

Atlanta, Georgia

or such other address as may be designated by CNC and/or WAWA by written notice to the City. All notices required to be given to the City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: Commissioner, Department of Parks, Recreation
and Cultural Affairs
675 Ponce de Leon Avenue, NE
8th Floor
Atlanta, Georgia 30308

or such other address as may be designated by the City by written notice to the WAWA and CNC.

No notice shall be effective if purported to be transmitted by telex, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

19.13 Interpretation

The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or WAWA or CNC. This Agreement shall be construed and performed according to the laws of the State of Georgia. The references to days shall mean calendar days unless otherwise stipulated.

19.14 Table of Contents and Section Headings

The table of contents and section headings contained herein are for the convenience of reference by City and WAWA and CNC and are not to be used to construe the intent of this Agreement or any part hereof, nor to modify,

amplify, or aid in the interpretation or construction of any of the provisions hereof.

19.15 Integrated Agreement, Modification

This Agreement contains the entire agreement of the Parties with respect to the Premises and cannot be amended or modified except by written instrument, signed by the Parties. If the Parties hereto have entered previously, do now or in the future enter, into any other contract, license, permit or agreement covering other premises or facilities, this Agreement and the terms, conditions, provisions, and covenants hereof, shall apply only to the Premises herein particularly described, and this Agreement or any of the terms, conditions, provisions, or covenants hereof, shall not in any way or in any respect change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations, of the Parties hereto under or by reason of any other said contract, permit, license, or agreement between said Parties.

19.16 Surrender and Merger

The voluntary or other surrender or termination of this Agreement by WAWA and/or CNC, or a mutual cancellation hereof by all Parties, shall not work a merger, and shall, at the option of the City, terminate all or any existing subcontracts and/or subleases applicable to the Premises, or may, at the option of the City, operate as an assignment to the City of all such subcontracts and/or subleases.

19.17 Quiet Enjoyment

WAWA and/or CNC, upon observing and keeping all of the covenants, terms, and provisions of this Agreement that must be observed and kept by them, shall lawfully and quietly hold, occupy, and enjoy the use of the Premises during the term of this Agreement.

19.18 Taxes

The City shall pay or cause to be paid, prior to delinquency, any lawful taxes and any assessments levied or assessed during the term hereof (a) on the Premises, (b) on all property interests hereunder or in the Premises, (c) on any improvements, fixtures, and equipment now or hereafter existing on the Premises and on any personal property on, in or about any buildings or improvements therein.

19.19 Holding Over

Should WAWA and CNC hold over said Premises after this Agreement has terminated in any manner, during such holding over they shall be deemed

merely a tenant at sufferance, but otherwise on the same terms and conditions as herein provided.

19.20 Joint and Several Liability

The obligations imposed throughout this Agreement upon WAWA and CNC shall be joint and several.

19.21 City Notification Under Specific Circumstances

WAWA and/or CNC shall notify the Commissioner or her/his designee by telephone and electronic mail within twenty-four hours of discovering a safety issue that needs to be addressed on the Premises, regardless of whether WAWA and/or CNC intends to resolve the issue.

WAWA and/or CNC shall notify the Commissioner or her/his designee by telephone and electronic mail within three hours of learning of any emergency event regarding or arising on the Premises that involves the media, the police or fire departments, and/or emergency medical services.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:

Sworn to and subscribed
Before me this _____ day
of _____, 2008.

Notary Public

**CHATTAHOOCHEE NATURE
CENTER:**

_____, PRESIDENT

ATTEST:

Sworn to and subscribed
Before me this _____ day
of _____, 2008.

Notary Public

**WEST ATLANTA
WATERSHED ALLIANCE:**

_____, PRESIDENT

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

APPROVED:

Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

Chief Procurement Officer

APPROVED AS TO FORM:

RECOMMENDED:

Senior Assistant City Attorney

Chief Operating Officer

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Department of Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Community Development and Human Resources

Chief of Staff Deadline: January 30, 2008

Anticipated Committee Meeting Date(s): February 13, 2008

Anticipated Full Council Date: February 18, 2008

Legislative Counsel's Signature: Robin Shahar

Commissioner Signature: [Signature]

Chief Procurement Officer Signature: _____

CAPTION

AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION, AND CULTURAL AFFAIRS, TO ENTER INTO A MANAGEMENT, OPERATING, AND PROGRAMMING AGREEMENT WITH THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE, IN ORDER TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO MANAGE AND OPERATE THE CITY'S OUTDOOR ACTIVITY CENTER AT NO COST TO THE CITY, AND IN ORDER TO ALLOW THE CHATTAHOOCHEE NATURE CENTER AND THE WEST ATLANTA WATERSHED ALLIANCE TO OPERATE EDUCATIONAL PROGRAMMING AT THE OUTDOOR ACTIVITY CENTER; AND TO ALLOW THE WEST ATLANTA WATERSHED ALLIANCE TO HAVE EXCLUSIVE USE OF THE OUTDOOR ACTIVITY CENTER'S OFFICE SPACE; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: _____

Received by LC from CPO: _____

(date) _____

(date) _____

by Mayor's Office: 1/30/08 [Signature]

Reviewed by: [Signature]

(date) _____

(date) _____

Submitted to Council: _____

(date)